

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of

Amendment of Section 73.202(b))	
Table of Allotments)	MM Docket No. 98-198
FM Broadcast Stations)	RM - 9304
(Cross Plains, Muenster, Benbrook,)	
Brownwood, Campbell, Clifton,)	
Coleman, Detroit, Graham, Granbury,)	
Kerens, McKinney, San Saba, Terrell,)	
Waco, Texas, and Durant and Lone)	
Grove, Oklahoma))	

RECEIVED

NOV 25 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

COUNTERPROPOSAL

FIRST BROADCASTING MANAGEMENT, LLC

KCYT-FM LICENSE CORP.

Mark N. Lipp
J. Thomas Nolan
Shook, Hardy & Bacon, LLP
1850 K Street, NW # 900
Washington, DC 20006
(202) 452-1450

Roy R. Russo
Lawrence N. Cohn
Cohn and Marks
1920 N Street, NW # 300
Washington, DC 20036-1622
(202) 452-4830

Its Counsel

Its Counsel

GAIN-AIR, INC.

Matthew H. McCormick
Reddy Begley & McCormick
2175 K Street, NW #350
Washington, DC 20037-1803
(202) 659-5700

Its Counsel

No. of Copies rec'd
List ABCDE

014

TABLE OF CONTENTS

Summary	ii
I. Introduction	2
II. Policy Limit on the Number of Changes to Other Stations	4
III. Compliance with the Commission's Technical Rules	6
A. Muenster (from 293A to 294C)	6
B. Granbury (from 294C to 296C1 at Benbrook with new site)	
1. Technical Compliance	9
2. Change of Community of License	9
C. Graham (from 296C3 to 234C3 - new site)	15
D. Waco (from 296A to 277A)	15
E. Clifton (from 277C3 to 281C3)	16
F. Brownwood (from 281C1 to 245C1)	16
G. San Saba (from 246A to 291A)	17
H. Terrell (from 296A to 295A at Kerens with new site)	
1. Technical Compliance	17
2. Change in Community of License	17
3. Community Indicia - Kerens, Texas	18
I. Coleman (from 296C3 to 272C3)	20
J. Lone Grove (from 294A to 296C3 - new site)	21
K. Madill (no change)	21
L. Durant (from 296C3 to 292C3)	22
M. McKinney (from 295A to 296A at Campbell with new site)	
1. Technical Compliance	23
2. Change in Community of License	23
3. Community Indicia - Campbell, Texas	26
N. Lawton (site change)	28
IV. The Cut and Shoot Case	28
V. Conclusion	30

SUMMARY

This Counterproposal is filed on behalf of First Broadcasting Management, LLC, the proposed assignee of Station KXGM(FM), Muenster, Texas, Gain-Air, Inc., the current licensee of KXGM, and KCYT-FM License Corp., licensee of Station KDXT(FM), Granbury, Texas, along with three other stations that are requesting improvements. This Counterproposal offers a first local service to three new communities, net population gain area increases to approximately 3.5 million persons and the elimination of several existing short spacings. In turn, various other stations will be required to change channel and/or transmitter site. However in each instance, the affected station has provided a statement of consent to the change. Thus, this Counterproposal complies with the limitation on involuntary changes set forth in Columbus, NE, 59 RR 2d 1185 (1986).

All of the proposals comply with the Commission's spacing rules and policies with regard to change in community of license. The new arrangement of allotments is preferred to the status quo, particularly when all of the benefits of the proposal are taken into account.

The Counterproposal conflicts with the Commission's Notice of Proposed Rule Making which proposes to allot Channel 245C3 to Cross Plains, Texas. The proponent, ALALATEX, provides a statement indicating its willingness to have Channel 290C3 allotted to Cross Plains instead. Therefore, both proposals can be granted. Should the Commission nevertheless compare the Counterproposal with the ALALATEX proposal, the Counterproposal would offer greater public interest benefits under the Commission's allotment priorities.

Accordingly, for the reasons set forth herein, the proponents urge the Commission to accept this Counterproposal for public comment.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of

Amendment of Section 73.202(b))	
Table of Allotments)	MM Docket No. 98-198
FM Broadcast Stations)	RM - 9304
(Cross Plains, Muenster, Benbrook,)	
Brownwood, Campbell, Clifton,)	
Coleman, Detroit, Graham, Granbury,)	
Kerens, McKinney, San Saba, Terrell,)	
Waco, Texas, and Durant and Lone)	
Grove, Oklahoma))	

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

COUNTERPROPOSAL

1. First Broadcasting Management, LLC ("FBM"), the proposed assignee¹ of Station KXGM-FM, Muenster, Texas, Gain-Air, Inc. ("Gain-Air"), the current licensee of Station KXGM-FM, and KCYT-FM License Corp., licensee of KDXT(FM), Granbury, Texas, by their respective counsel, and jointly by the following co-petitioners: (1) Chuckie Broadcasting Company, licensee of Station KYNZ(FM), Lone Grove, Oklahoma; (2) KZDL Licensee Co., L.L.C., licensee of Station KZDL(FM), Terrell, Texas; and (3) KZDF License Co., L.L.C., licensee of Station KZDF(FM), McKinney, Texas, hereby request the following changes to the FM Table of Allotments with regard to their respective stations:

-
1. An affiliate of FBM has entered into a Purchase and Sale Agreement for KXGM which (following the filing of an FCC Form 314 assignment application and its approval by the Commission) is to be consummated at the conclusion of this proceeding. Thus, FBM is the ultimate beneficiary of the channel changes proposed herein and is the responsible party for all reimbursements. In the unlikely event that an unforeseen circumstance occurs whereby FBM does not become the licensee of KXGM, Gain-Air, Inc. will reimburse all of the affected stations to the extent ordered by the Commission.

- (1) Station KXGM-FM proposes to substitute Channel 294C for Channel 293A at Muenster, Texas and change its transmitter site location;
- (2) Station KDXT proposes to substitute Channel 296C1 for 294C, change its community of license from Granbury to Benbrook, Texas as its first local service and change its transmitter site location;
- (3) Station KYNZ proposes to substitute Channel 296C3 for Channel 294A at Lone Grove, Oklahoma and change its transmitter site location;
- (4) Station KZDF proposes to substitute Channel 296A for Channel 295A, change its community of license from McKinney, to Campbell, Texas as its first local service and relocate its transmitter site;
- (5) Station KZDL proposes to substitute Channel 295A for Channel 296A, change its community of license from Terrell to Kerens, Texas as its first local service and relocate its transmitter site.

I. INTRODUCTION

2. In order to accommodate these proposed changes, it will be necessary to make several additional changes to the FM Table of Allotments which are summarized below. In each case, FBM has entered into written agreements and provides consent statements for the changes from the respective licensees. FBM has agreed to reimburse the licensees for the reasonable costs of their channel changes and, in the one case in which it is necessary, the relocation of the station's transmitter site. FBM hereby states that, as the ultimate benefitting party, it will reimburse all stations that are ordered to make changes to their facilities. The additional changes involve the following stations:

- (1) Station KWKQ(FM), Graham, Texas has agreed to change its channel from 296C3 to 234C3 and its transmitter site location. A consent statement is attached in Exhibit No. 1.

(2) Station KWBU(FM), Waco, Texas has agreed to change its channel from Channel 296A to Channel 277A. A consent statement is attached in Exhibit No. 1.

(3) Station KWOW(FM), Clifton, Texas has agreed to change from Channel 277C3 to Channel 281C3. A consent statement is attached in Exhibit 1.

(4) Station KXYL-FM, Brownwood, Texas has agreed to change from Channel 281C1 to Channel 245C1. A consent statement is attached in Exhibit No. 1.

(5) Station KSTA-FM, Coleman, Texas has agreed to change from Channel 296C3 to Channel 272C3. A consent statement is attached in Exhibit No. 1.

(6) Station KLBC(FM), Durant, Oklahoma has agreed to change from Channel 296C3 to Channel 292A or Channel 292C3.² A consent statement is attached as Exhibit No. 1. The licensee is currently operating as a Class A station.

(7) Station KBAL-FM, San Saba, Texas has agreed to change from Channel 246A to Channel 291A. A consent statement is attached as Exhibit No. 1.

3. Thus, of these seven additional changes, only one requires a change in transmitter site. A discussion of the technical analysis involved in each of these channel substitutions is set forth herein. In addition, the public interest benefits of the proposal are also discussed at length herein. Finally, compliance with the Commission's policies on change of community of license is also discussed in this document.

4. This Counterproposal conflicts with the proposal set forth in the Notice of Proposed Rule Making ("NPRM") for Channel 245C3 at Cross Plains, Texas, due to the proposed substitution of Channel 245C1 at Brownwood, Texas herein. FBM proposes the alternative allotment of Channel 290C3 to Cross Plains, Texas instead. See Engineering Statement, Figure 18 for channel study. The

2. This is the same change in class that is proposed in the NPRM in MM Docket 98-63, 13 FCC Rcd 9395 (1998).

Cross Plains petitioner, ALALATEX, has provided a statement consenting to the allotment of Channel 290C3. See Exhibit 1. In view of the fact that there is no longer a conflict at Cross Plains, the Commission should view this Counterproposal under a more relaxed compliance standard rather than the higher standard placed upon counterproposals when other proposals could be affected thereby.

The following is a listing of all of the requested changes to the current FM Table of Allotments:

City	Present	Proposed
Durant, Oklahoma	296C3 ³	292A or 292C3
Lone Grove, Oklahoma	294A	296C3
Benbrook, Texas	-----	296C1
Brownwood, Texas	281C1	245C1
Campbell, Texas	-----	296A
Clifton, Texas	277C3	281C3
Coleman, Texas	296C3	272C3
Cross Plains, Texas	-----	290C3
Detroit, Texas	294C2	282C2 or 238C2
Graham, Texas	296C3	234C3
Granbury, Texas	294C	-----
Kerens, Texas	-----	295A
McKinney, Texas	295A	-----
Muenster, Texas	293A	294C
San Saba, Texas	246A	291A
Terrell, Texas	296A	-----
Waco, Texas	296A	277A

In support hereof, the following is stated:

II. POLICY LIMIT ON THE NUMBER OF CHANGES TO OTHER STATIONS

4. The Commission has stated that it will not grant a rule making proposal which requires more than two stations to change channels involuntarily. *Columbus, NE et al.*, 59 RR 2d 1185 (1986). However, where all of the affected stations consent to the change in channel, the

3. The NPRM in MM Docket 98-63, *supra*, at note 6, indicates that Station KLBC was downgraded from Class C2 to Class C3 by grant of BMPH-940401IA.

Commission has not imposed a limit on such changes. See, e.g., Castle Rock, Colorado et al. 8 FCC Rcd 4475 (1993); Farmersville, Texas et. al., 12 FCC Rcd 4099 (1997), recons denied 12 FCC Rcd 12056 (1997).

5. In the instant case, FBM has reached agreements with all of the affected stations in advance of filing this proposal. These agreements provide for reimbursements for channel and in some instances, transmitter site changes, and the licensees' consents to the changes are reflected in the statements provided in Exhibit No 1. In each case, the licensee has consented either because its station will achieve coverage improvements, permit future improvements or the station will suffer no adverse effect on its operation.

6. FBM hereby states that pursuant to Section 1.420(j), it has not paid nor promised to pay, in any of its agreements, any licensee or permittee for withdrawing an expression of interest, dismissing an application or forbearing to file an expression of interest or application. In addition, FBM is cognizant of the Commission's concern that where a large number of channel changes are proposed, there can be complications with the implementation of all of the changes in a timely manner. FBM wishes to assure the Commission that due to its prior experience in having achieved a similar large number of station changes in a relatively quick manner and due to the extensive preparatory work in which it has been engaged, resulting in channel and site change agreements with all of the affected stations, it expects that the implementation process will proceed smoothly.

7. In this regard, FBM was recently involved in this same process in MM Docket 96-10, 12 FCC Rcd 4099 (1997) with respect to another station. FBM was the general partner of the licensee of Station KNKI(FM), Flower Mound, Texas and its upgrade was dependent on the prior move of seven other stations. All of the changes necessary to allow KNKI to commence operations took place in less time than it took to complete construction of the new KNKI tower. In all, the implementation process took less than a year from the date of the KNKI final order which included

the application processing time. Here, in view of FBM's agreements with each of the stations and the fact that five of the stations need only to change their channel, FBM is convinced that all stations can make changes in a reasonable period of time and with a minimum of disruption to the stations themselves and to the Commission's resources.

8. As a final preliminary matter, FBM hereby states that should the Commission substitute Channel 294C for Channel 293A at Muenster as requested, FBM will apply for a new transmitter site to implement the order and will construct the facilities in an expeditious manner.

III. COMPLIANCE WITH THE COMMISSION'S TECHNICAL RULES

A. KXGM-FM, Muenster, Texas

9. Station KXGM-FM currently operates on Channel 293A at Muenster, Texas. That channel is currently short spaced to Station KYNZ, Lone Grove, Oklahoma. As demonstrated in the attached Engineering Statement, at Figure 1, Channel 294C can be allotted to Muenster at coordinates 33° 26' 13" N/97° 29' 05" W provided the following additional changes are made (each of these changes is discussed in further detail later in this pleading):

(1) Station KDXT, Granbury, Texas requests the substitution of Channel 296C1 for Channel 294C, at a new site location and a change in its community of license to Benbrook, Texas;

(2) Station KYNZ, Lone Grove, Oklahoma requests the substitution of Channel 296C3 for Channel 294A at a new site location;

(3) Station KZDF, McKinney, Texas requests the substitution of Channel 296A for Channel 295A, at a new site location an change its community of license to Campbell, Texas;

(4) Station KCLI, Clinton, Oklahoma must change its transmitter site only. The licensee has provided a consent statement in Exhibit 1 to the site change.⁴ A channel study is provided at the new site location. See Figure 53.

10. Each of the above stations has entered into an agreement with FBM to provide assurance to the Commission that the changes will indeed be implemented.

11. In addition, the Muenster channel study indicates that a proposed allotment in MM Docket No. 97-26, 13 FCC Rcd 15591 (1998), review pending, for Channel 294C2 at Detroit, Texas is short spaced to Channel 294C at Muenster. FBM proposes here the allotment of Channel 282C2 instead of Channel 294C2 at Detroit. See Engineering Statement, Figure 48 or Channel 238C2, Figure 49. In addition, FBM will file comments in MM Docket 97-26 suggesting the alternate channel be allotted in that proceeding. Thus, regardless of the outcome of MM Docket 97-26, Detroit can receive a first local service.⁵

12. In that same proceeding (MM Docket No. 97-26), the Commission denied the substitution of Channel 294C2 for Channel 238C2 at Hugo, Oklahoma for Station KITX(FM). FBM proposes here that in the event that the Commission reverses its decision on review, Channel 282C2

4. The licensee has an application pending to relocate its transmitter site to a location which is not short spaced (BMPH-980403IA). In addition, the licensee has filed a rule making proposal to further relocate its site and change its city of license in MM Docket 98-70. The rule making site is also nonshort spaced to this proposal. That rule making proposal is unopposed and can be granted at any time. However, FBM is not relying on a grant of the pending application or on the outcome of the rule making proceeding. Since this counterproposal can be processed without regard to the pending application and rule making, there is no contingency which would involve the policy set forth in Cut and Shoot, Texas, 11 FCC Rcd 16383 (1996).

5. The Commission should note that the original petition for Channel 294C2 at Detroit, Texas has been withdrawn.

could be considered as an alternate channel substitution at Hugo.⁶ See Engineering Statement, Figure 50.⁷ The proposal for Detroit and Hugo is mutually exclusive. Thus, if necessary Channel 282C2 could be allotted to Hugo and Channel 238C2 allotted to Detroit here.⁸

13. The Muenster proposal is not in any way contingent on the outcome of MM Docket 97-26. A substitute channel (282C2) is available at either Detroit or Hugo. Thus, no matter which community receives Channel 294C2 in MM Docket 97-26, FBM's counterproposal here can be granted. The Commission's Cut and Shoot *supra*, policy is not applicable to this proposal. See further discussion in Section IV, *infra*.

14. The proposed upgrade to Channel 294C at Muenster will provide a population gain of 2,912,627 persons and a net increase in coverage by 23,940 sq. km within the 60 dBu contour with no loss area. See attached Engineering Statement at Figure 3. FBM/Gain Air hereby state that it will apply for the higher class channel and construct the facility, if granted.

6. The channel studies for Channel 282C2 at Hugo and Detroit indicate that Channel 282C2 was substituted at Paris, Texas in MM Docket No. 95-126. However the Channel 282C2 substitution is not final because an Application for Review is pending which proposes to delete that channel from Paris and allow the Paris station to remain on Channel 270C2. The Application for Review has been rendered moot by virtue of the Commission's recent decision in MM Docket 97-225. A MO&O reinstating Channel 270C2 at Paris is expected to be released shortly. Thus the Paris channel is not an obstacle to consideration here. See e.g., Olney, Texas et. al. (DA-98-2002, released October 2, 1998) at note 1.

7. In order to allot Channel 282C2 to Hugo, Channel 262A must be substituted for unused Channel 284A at Antlers, Oklahoma. A channel study for Channel 262A at Antlers is provided. See Engineering Statement, Figure 51.

8. Finally in MM Docket No. 97-26, the Commission also considered the allotment of Channel 294C2 at Antlers, Oklahoma. (This is a different allotment from the one just discussed in note 7.) However the Commission decided to allot Channel 222C2 at Antlers. That allotment is not in question on review. Nevertheless, FBM provides a channel study for Antlers to demonstrate that Channel 222C2 can be allotted here as a substitute, if MM Docket No. 97-26 is not final at the time this rule making proceeding is ripe for disposition. See Engineering Statement, Figure 52.

B. Station KDXT, Granbury to Benbrook, Texas

1. TECHNICAL COMPLIANCE

15. Station KDXT can move its transmitter site to serve Benbrook, Texas at coordinates of 32° 26' 17" N/97° 49' 06" W on Channel 296C1 in compliance with the Commission's minimum distance separation requirements provided channel substitutions are made for stations at Graham, Waco, Terrell and Coleman, Texas. See Engineering Statement, Figure 4. Each of these stations can change channels as will be discussed, *infra*. The licensee of Station KDXT is a co-petitioner in this proposal and hereby states that it will file an application to relocate its transmitter site to serve Benbrook.

2. CHANGE OF COMMUNITY OF LICENSE

16. In Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recons. granted in part, 5 FCC Rcd 7094 (1990) (hereinafter "Community of License"), the Commission stated that the proposed channel must be mutually exclusive with the existing channel and the new community must be preferred over the existing community under the Commission's allotment priorities. The attached technical showing demonstrates that Channel 296C1 at Benbrook, Texas is mutually exclusive with the current use of Channel 294C at Granbury, Texas. The new community, Benbrook (U.S. Census 1990 pop. 19,564) will obtain a first local service whereas Granbury (U.S. Census pop. 4,045) will retain existing service from Station KPAR(AM). Under the Commission's allotment criteria, a first local service to a larger community (Benbrook) is preferred over second local service to a smaller community (Granbury). See, Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982). The Commission also requires that a community which loses an FM service

must retain at least one local service. As stated, KPAR(AM), licensed to Fran Parr, will continue to be licensed to Granbury.

17. In Community of License, *supra*, 5 FCC Rcd at 7096, the Commission stated that it was concerned with the potential migration of stations from underserved rural areas to well served urban areas. In making this determination, the Commission has been guided by the criteria set forth in Faye and Richard Tuck, 3 FCC Rcd 5374 (1988). Benbrook is located in the Fort Worth Urbanized Area in Tarrant County. Accordingly, Petitioner has submitted a Tuck showing which will demonstrate that Benbrook is an independent community that deserves its own local radio station. The Tuck case considers the relative size and proximity of the central city to the proposed community of license and the signal population coverage. Benbrook, located in southwest Tarrant County adjacent to Fort Worth, has a population 4.4% of the population of Fort Worth. See also Ada, Newcastle and Watonga, Oklahoma, 11 FCC Rcd 16896 (1996) (new city population is 0.9% of the central city); Scotland Neck and Pinetops, North Carolina, 10 FCC Rcd 11066 (1995) (3.1% of the central city). The proposed 70 dBu signal will not reach Fort Worth. In any event, the Commission has repeatedly stated that these factors have less significance than evidence of independence. See, e.g., Headland, AL and Chattahoochee, FL, 10 FCC Rcd 10352 (1995).

18. The Commission considers eight factors in assessing the independence of a specified community: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has a zip code or its own telephone book provided by the local telephone company; (6) whether the community has its own commercial establishments,

health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries. Faye and Richard Tuck, *supra*, at ¶ 36. All eight factors need not favor the applicant; however, if a majority of the factors demonstrate that the specified community is distinct from the urbanized area, the Commission will treat it as an independent community. *Id.*; Parker and St. Joe, Florida, 11 FCC Rcd 1095, ¶¶ 9-11 (1996) (finding that the proposed community was independent, although it lacked its own telephone directory and local newspaper, and was included in the urbanized area's market by Arbitron); *accord*, Jupiter and Hobe Sound, Florida, 12 FCC Rcd 3570, ¶ 3 (1997) (citing Parker and St. Joe, Florida).

19. In this case, a majority of the eight factors demonstrate that Benbrook is unquestionably separate and independent from Fort Worth:

(1) *Where Residents of the City of Benbrook Work.* According to 1990 U.S. Census Bureau Data, 9.4% of the residents of Benbrook work in the City of Benbrook.

(2) *There are Local Publications that Cover the Needs and Interests of the City of Benbrook.* The residents of Benbrook are served by its own local newspaper *The Benbrook News*. *The Benbrook News* is published once a week and its circulation in Benbrook is approximately 6,500. Benbrook is also served by *The Journal* which is published every other week and has a circulation in Benbrook is approximately 13,700. In addition, the City of Benbrook maintains its own webpage and regularly publishes a Community Newsletter.

(3) *Community Leaders and Residents of Benbrook Perceive Themselves as Separate From Fort Worth.* The City of Benbrook has a rich history. It was originally settled in the 1850s by pioneers from Tennessee. A school building was built in 1857. In 1876, local resident James M. Benbrook petitioned the Texas & Pacific Railroad to place a station along Mary's Creek

as the railroad ran west out of Fort Worth. The line was built in 1880 and the station was named after Benbrook by the railroad. By 1941 the Benbrook community had grown to 100 people and three stores. In 1947 the residents voted to incorporate as a Village. The 1960 census reveals that Benbrook had grown to 3,254 people. 1990 U.S. census figures put the population for the City of Benbrook at 19,564; by that time the number of businesses had grown to over 400. The North Central Texas Council of Governments estimates that as of 1997, the population had risen to 21,150. See, Exhibit No. 1. Benbrook was recently presented a "Star City Award" by *Outlook Magazine*, an award that was presented to only 30 cities in Texas based upon economic strength, pro-business policies, and high quality of life.

A number of businesses identify strongly with the City of Benbrook and include the word "Benbrook" in their name, for example: Benbrook Auto Service; Benbrook Car Care; Benbrook Car Wash; Benbrook Floral; Benbrook Funeral Home; Benbrook Pest Control; Benbrook Stables; Benbrook Travel; Benbrook 3-Par Golf Course; and Benbrook Animal Hospital.

Mr. Andy Wayman, the Director of Public Services for the city, confirms that the city government perceives Benbrook as being an autonomous community that does not depend on Fort Worth for its identity.

(4) *The City of Benbrook Has Its Own Local Government and Elected Officials.* Benbrook was incorporated in 1947. Its local government functions independently of Fort Worth. See, Benbrook City Charter, Exhibit No. 1. The City government is a Council-Manager form of government, with seven council members (including the Mayor) all elected at-large for two-year staggered terms. In addition, the City of Benbrook has its own Planning and Zoning Commission, Zoning Board of Adjustment, Board of Appeals, Civil Service Commission, Parks and Recreation Board, and Economic Development Corporation. See, City of Benbrook Boards and Commissions Handbook (January 1998), Exhibit No. 1. There is also a Benbrook Municipal Court.

According to Mr. Wayman, the City of Benbrook has 82 full-time employees. Key municipal personnel include the City Manager, City Secretary, City Attorney, Police Chief, Fire Chief, Finance Director, Comptroller, and City Tax Assessor.

(5) *The City of Benbrook Is Located Wholly Within One Zip Code.* The zip code for the City of Benbrook is 76126. The U.S. Postal Service operates a Post Office in Benbrook to service the area.

(6) *The City of Benbrook Has Numerous Commercial Establishments and Its Own Health Facilities.* There are numerous businesses located within the City of Benbrook. See Exhibit No. 1. As mentioned above, a number of businesses use “Benbrook” in their name. There is also a Benbrook Area Chamber of Commerce.

For recreation, there are four parks within the City of Benbrook, five tennis courts and Benbrook Lake. Camping facilities are available at the Full-Timer RV Park and Campsite, located in Benbrook. Benbrook 3-Par is a nine hole golf course, which also offers a driving range, minigolf course, and batting cages. For indoor recreation there is the Benbrook Community Center and the Benbrook Senior Citizens Center. In addition, there are various community events held throughout the year for the residents of Benbrook. For example, on June 27, 1998, the Benbrook Area Chamber of Commerce sponsored SummerFest ‘98 at Benbrook Lake. Activities included a parade, fireworks, a country concert, food, games, crafts and all day entertainment. There is also an annual Winter Dinner held in November or December, and this September is the 11th Annual Dinner and Truck Raffle.

The City of Benbrook is also home to a number of religious and civic organizations. The many churches located in Benbrook include Benbrook Christian Fellowship, Heritage Baptist Church, Benbrook United Methodist Church, First Assembly of God, First Baptist Church-Benbrook, and Trinity Hills Baptist Church. Civic organizations include the Benbrook Fire

Fighters Association, the Benbrook Lions Club, the Benbrook Police Officers Association, North Benbrook Neighborhood Association, Trinity Estates Neighborhood Association, the American Legion, and the Veterans of Foreign Wars.

Hospital services are available at nearby Harris Methodist-Southwest and All Saints Hospital-Cityview. There are three retirement centers in Benbrook, including Oak Park Retirement Center, Renaissance Park, and Trinity Hills Manor. Health care is also available through local physicians, including the Benbrook Family Practice medical group. Veterinary services are available at the Benbrook Animal Hospital and the Mercedes Place Animal Hospital.

(7) *Extent to which the community and the central city are part of the same advertising market.* Businesses in Benbrook may advertise in *The Benbrook News* and *The Journal*, which enables them to reach the residents of Benbrook and does not involve Fort Worth media sources. Residents may also access the City's webpage or read the City's community newsletter to learn about community news and events. Thus, the residents of Benbrook do not need to travel to Fort Worth or seek out Fort Worth media sources in order to find out what is happening in their community.

(8) *The City of Benbrook Has Its Own Police Department, Fire Department and Library.* The City of Benbrook operates the Benbrook Police Department. There is also a Benbrook City Fire Department and a Benbrook City Ambulance Service. Water and sewer are provided by the Benbrook Water and Sewer Authority, an independent special district created by the Texas legislature in 1955 for the sole purpose of providing the people of Benbrook with water and sanitary sewer service. Water is derived from Benbrook Lake and from 14 groundwater wells. The Benbrook Public Library, operated by a non-profit group, has a total of 20,000 volumes.

20. Thus, unquestionably, Benbrook is a vibrant and thriving community which is separate and independent from Fort Worth and, as such, has a need for its own local radio station.

21. Finally, as shown in the attached Engineering Statement, at Figure 8, the change in site location to serve Benbrook will result in a net population gain of 756,461 persons within the 60 dBu contour.

22. Implementation of this proposal will create a loss area but all of this loss area will continue to receive at least five aural services. See Atlantic and Glenwood, Iowa, 10 FCC Rcd 13160 (1995). See Engineering Statement, Figures 9 and 10. The licensee, KCYT-FM License Corp., will apply for Channel 296C1 if reallocated to Benbrook.

C. Station KWKQ, Graham, Texas

23. Station KWKQ has a permit to operate on Channel 296C3 at Graham. The station is currently operating with Class A facilities. In order for Channel 296C1 to be allotted to Benbrook, Channel 296C3 must be deleted from Graham. Channel 234C3 is available for substitution at Graham at a new site location. See Engineering Statement at Figure 11. The licensee has provided a statement in Exhibit No. 1 indicating its willingness to relocate to a new transmitter site on Channel 234C3 in exchange for reimbursement. FBM has entered into a reimbursement agreement with KWKQ and hereby states that it will reimburse Station KWKQ for its expenses in changing channel and transmitter site. As indicated in the attached Engineering Statement, Channel 234C3 can be substituted in compliance with the Commission's spacing rules. In addition, from the new site location, there will be a net gain in population and area of 11,335 persons and 2,926 sq. km respectively. See Figure 13.

D. Station KWBU, Waco, Texas

24. In order to allot Channel 296C1 to Benbrook, Channel 277A must be substituted for Channel 296A at the current site of Station KWBU. See Figure 14 of the Engineering Statement. Channel 277A can be allotted to Waco provided a channel substitution is made for Station KWOW(FM), Clifton, Texas. The Clifton substitution is discussed, *infra*. The current Channel

296A has two short spacings which will be eliminated by the channel change. See Engineering Statement. The licensee has provided a statement in Exhibit No. 1 indicating its willingness to change channels in exchange for reimbursement. FBM has entered into a reimbursement agreement with KWBU and hereby states it will reimburse KWBU for its expenses.

E. Station KWOW, Clifton, Texas

25. In order to substitute Channel 277A at Waco, Channel 277C3 must be deleted from Clifton, Texas. Station KWOW currently operates on Channel 277C3 at Clifton, Texas. It has a permit to relocate its site (BPH-971222IE). The proposal here to substitute Channel 281C3 meets the Commission's spacing rules at the current license site and at the application site provided Station KXYL-FM, Brownwood, Texas changes channels. See Engineering Statement, Figure 15. The Brownwood channel change is discussed in the next section. By this substitution, an existing short spacing on the current channel will be eliminated. The Clifton licensee has provided a statement of consent to this channel change provided it receives reimbursement. FBM has entered into a reimbursement agreement with KWOW and hereby states it will reimburse KWOW for its expenses.

F. Station KXYL-FM, Brownwood, Texas

26. In order to allot Channel 281C3 at Clifton, Channel 281C1 must be deleted at Brownwood. Channel 245C1 can be substituted at Brownwood for Station KXYL-FM at its current site according to the attached Engineering Statement, Figure 17, provided Station KBAL-FM, San Saba changes channel and provided Channel 290C3 is considered for allotment to Cross Plains instead of the proposed Channel 245C3. See Figure 18 and para. 4, *supra*. The channel substitution for San Saba is discussed, *infra*. The licensee provides a statement of consent to the change in Exhibit No. 1 provided it receives reimbursement. FBM has entered into a reimbursement agreement with KXYL and hereby states it will reimburse KXYL for its expenses.

G. Station KBAL, San Saba, Texas

27. In order to allot Channel 245C1 at Brownwood, Channel 246A must be deleted from San Saba. Channel 291A can be substituted at San Saba, Texas for Station KBAL at its current license site according to the attached Engineering Statement, Figure 19, provided Channel 259A is substituted for the proposed allotment of Channel 291A at Mason, Texas. See MM Docket No. 97-244, in which several Class A channels including Channel 259A have been proposed at Mason. Channel studies for the proposed substitute channels at Mason are provided in the Engineering Statement. See Figure 20. As for the San Saba substitution, the licensee has provided a statement consenting to the channel change. See Exhibit No. 1. As mentioned earlier, KBAL has entered into a reimbursement agreement with FBM. FBM hereby states it will reimburse KBAL for its expenses.

H. Station KZDL, Terrell, Texas

1. TECHNICAL COMPLIANCE

28. In order to allot Channel 296C1 to Benbrook, Channel 296A must be deleted at Terrell, Texas. Channel 295A can be substituted if reallocated to Kerens, Texas as its first local service. See Engineering Statement, Figure 22.

2. CHANGE IN COMMUNITY OF LICENSE

29. In Exhibit 1, KZDL License Co., L.L.C., licensee of Station KZDL, provides a statement indicating its desire to change its community of license from Terrell, Texas (pop. 12,490) to Kerens, Texas (pop. 1,702) to provide a first local service. The proposed new Channel 295A is mutually exclusive with the current use of Channel 296A at Terrell. Kerens is not located in an urbanized area nor does the proposed 70 dBu contour cover more than 50% of an Urbanized Area. In fact, the existing community, Terrell, is located just outside of the Dallas urbanized area and is

well served by numerous stations from the Dallas area while Kerens is located in a rural area in Navarro County (pop. 39,926) with only two other stations located in the county. Terrell will retain local service from Station KPYK(AM). Thus, the proposed move is from an urban area to a rural area.

3. COMMUNITY INDICIA

Kerens, Texas

30. The City of Kerens is an established community whose residents share common interests and identify with their city. Kerens has the social, economic and governmental indicia to qualify as a community for allotment purposes.

Government

31. Kerens is an incorporated city with a Council-Manager form of government. The six council members (including the Mayor) are elected for two-year terms. According to the City Secretary, Ms. Cindy Scott, the city government of Kerens has 12 full-time employees. The City of Kerens operates the Kerens Police Department, and there is also a Kerens Volunteer Fire Department. The City provides its residents with certain municipal services, including water and sewer. The Kerens Independent School District provides public education from kindergarten through the twelfth grade through Kerens Elementary School, Kerens Middle School and Kerens High School. Kerens City Library offers reading materials to the community. The City of Kerens has its own zip code, 75144, and the U.S. Postal Service operates a Post Office in Kerens to service the area.

Cultural

32. There are several events held annually for the residents of Kerens. These include the Chamber of Commerce Banquet, the 4th of July Festival, and the Homecoming Parade. For outdoor activities there is a park in the City of Kerens. Further evidence of a strong sense of community is

that the City has its own newspaper. Local news is published in the *Kerens Tribune*, a weekly newspaper with a paid circulation in the City of Kerens of approximately 905.

33. There are many churches located within the City of Kerens, including the First Baptist Church of Kerens, Faith Christian Fellowship, First Assembly of God Church, First Methodist Church, and Church of Christ of Kerens. Community and civic organizations in Kerens include the Kiwanis Club, Band Boosters Organization, Athletic Department Organization, Kerens Garden Club, 4-H Club, Pioneer Literacy Club, and the Masonic Club.

34. The City of Kerens has experienced steady growth over the past twenty years. According to the U.S. Census Bureau, the population of Kerens grew from 1,446 in 1970, to 1,582 in 1980, and 1,702 in 1990.

Business

35. There are numerous businesses located within the City of Kerens, as illustrated in the attached business listing. See, Exhibit No. 1. To promote business development in the community, there is a City of Kerens Chamber of Commerce. A number of businesses so identify with the City that they use “Kerens” in their name, including: Kerens Alternative Learning; Kerens Apartments; Kerens Child Development Center; Kerens Mini Warehouse; Kerens Quik Stop; Kerens Southwood; and Kerens Grain Elevator. Health services are available through Grace & Mercy Health Clinic and Kerens Southwood, and dental services are provided through Kerens Dental Clinic.

36. As demonstrated above, the City of Kerens qualifies as a community for allotment purposes due to its independent government body, strong community identity, and numerous businesses. As such, it is deserving of its first local service.

37. Commission case law supports the proposed reallocation of Channel 295A to Kerens. See, e.g., Marion and Orrville, Alabama, 6 FCC Rcd 3482 (1991), where the Commission changed the community of license from Marion (pop. 4,467) to Orrville (pop. 349), leaving Marion with a

daytime only AM station; Henderson and Tatum, Texas et al., 12 FCC Rcd 4099 (1997); recons. denied, 12 FCC Rcd 12056 (1997); (larger city had approximately 9 times more population) Oshkosh, WI, et al., 10 FCC Rcd 2085 (1995) (larger city had 27 times more population); Pine Bluff and Maumelle, AR, 6 FCC Rcd 5119 (1991) (larger city had 10 times more population); and Jessup and Midway, Georgia, 6 FCC Rcd 2196 (1991) (larger city had 20.6 times more population).

38. By relocating Station KZDL to Kerens at the site proposed in the attached Engineering Statement, Figure 24, 56,348 persons will gain service while 81,878 persons will lose service. The area coverage will increase by 20 sq. km. In the loss area, there are more than five reception services remaining. See Figures 25 and 26. See e.g., Ravenwood and Elizabeth, West Virginia, 10 FCC Rcd 5181 (1995). Since Kerens is deserving of a first local service preference under Priority 3,⁹ the fact that there would be a net loss of service is inconsequential. In addition, the proposal to reallocate Channel 295A to Kerens should be evaluated as part of the overall proposal which will provide a Class C upgrade at Muenster, a first local service at Benbrook, Campbell, and Kerens, Texas and increases in service at various other communities. FBM has entered into an agreement with the licensee which provides for reimbursement for these changes and hereby states that it will reimburse the licensee for its expenses. Furthermore, by deleting Channel 296A from Terrell, a pre-existing short spacing to Channel 295A at McKinney, Texas will also be eliminated. See Engineering Statement. The licensee has provided its consent to the changes and has agreed to apply for the changes if approved. See Exhibit No. 1.

I. Station KSTA-FM, Coleman, Texas

39. In order to allot Channel 296C1 to Benbrook, Channel 272C3 must be substituted for Channel 296C3 at Coleman for Station KSTA-FM at its current site. See attached Engineering Statement, Figure 21. The licensee has provided a statement consenting to the proposed change.

9. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

See Exhibit No. 1. The licensee has entered into an agreement with FBM for reimbursement of its channel change. FBM hereby states it will reimburse KSTA for its expenses.

J. Station KYNZ, Lone Grove, Oklahoma

40. In order to allot Channel 294C to Muenster, Station KYNZ proposes to upgrade its facility from Channel 294A to Channel 296C3 at a new site location. See attached Engineering Statement, Figure 28. The licensee states it will apply for the channel upgrade and relocation of its transmitter site. See statement attached in Exhibit No. 1. FBM has entered into a reimbursement agreement for the costs of its channel change and hereby states that it will reimburse the licensee. The channel study also indicates that channel substitutions will be necessary at Durant and Madill, Oklahoma which are discussed, *infra*. Finally, a transmitter site reference point change will be necessary at Lawton, Oklahoma for Station KVRW on Channel 297C2. The licensee of KVRW has provided a statement consenting to the site relocation in Exhibit No. 1 and states that it will apply for a new site, if necessary, to comply with the Commission's spacing rules. A channel study at the new reference coordinates for Station KVRW at Lawton is provided with the Engineering Statement, Figure 39. The Lone Grove upgrade will result in a gain area of 2,335 sq. km and a population gain of 24,699 persons with no loss area. See Engineering Statement, Figure 30.

K. Station KMAD, Madill, Oklahoma

41. The proposal to allot Channel 296C3 to Lone Grove conflicts with a proposal in MM Docket 98-63 for Channel 296A at Madill, Oklahoma. However, the Channel 296A proposal at Madill has been withdrawn. In this regard, the licensee of Station KMAD, Madill, has filed a settlement in MM Docket 98-63, which will result in Channel 273C2 being used at Whitesboro, Texas in place of Channel 273A at Madill (rather than 296A), eliminating the conflict in this proceeding. The attached Engineering Statement includes a channel study for Channel 273C2 at Whitesboro, Texas. Since the Channel 296A proposal for Madill has been withdrawn, that

proceeding is uncontested and the Commission can accept the Lone Grove proposal here. The Commission has a long standing policy to accept such proposals where the other pending proceeding is uncontested. Cf. Oxford and New Albany, Mississippi, 3 FCC Rcd 615 (1988), at note 3, recon. granted, 3 FCC Rcd 6626 (1988). Accordingly the Commission's policy as set forth in Cut and Shoot, *supra*, is not implicated here.

L. Station KLBC, Durant, Oklahoma

42. In order to allot Channel 296C3 to Lone Grove, Channel 292A or Channel 292C3 must be substituted at Durant, Oklahoma, for Channel 296C3 (as proposed in the NPRM in MM Docket 98-63) as KLBC's frequency. No site change is required. See Engineering Statement, Figures 34 and 35. Since the station currently operates with Class A facilities, there will be no change in coverage. The licensee has provided its consent to the proposed channel change and downgrade in Class in Exhibit No. 1. The licensee has reached an agreement with FBM for reimbursement for the change in channels. FBM hereby states that it will reimburse Station KLBC for its expenses.

43. Although the substitution of Channel 292A has been proposed in another proceeding (MM Docket 98-63), by providing a statement of consent to the substitution of Channel 292A, this proposal is not in anyway contingent on the outcome of MM Docket 98-63. Thus this proposal is capable of being effectuated by itself in accordance with the policies set forth in the Cut and Shoot case which will be discussed in Section IV. In addition, as discussed earlier, a settlement has been filed in MM Docket 98-63 under which Channel 292A will be allotted to Durant. Since MM Docket 98-63 is now uncontested and the outcome can be anticipated, the Commission should accept this proposal.

M. Station KZDF, McKinney to Campbell, Texas

1. TECHNICAL COMPLIANCE

44. In order to allot Channel 294C to Muenster, Channel 295A must be deleted from McKinney, Texas. Channel 296A can be substituted if reallocated to Campbell, Texas as its first local service. See Engineering Statement, Figure 42. Furthermore, by deleting Channel 296A from Terrell, a pre-existing short spacing to Channel 295A at McKinney, Texas will also be eliminated. See Engineering Statement.

2. CHANGE IN COMMUNITY OF LICENSE

45. The licensee of Station KZDF, a co-petitioner herein, requests that Channel 295A at McKinney, Texas be replaced with Channel 296A at Campbell, Texas. As indicated in the attached channel study, this reallocation can be accomplished provided Station KZDL is relocated from Terrell to Kerens, Texas as discussed earlier and Channel 292A is substituted at Durant, also as discussed earlier. The proposed allotment of Channel 296A at Campbell is mutually exclusive with the current use of Channel 295A at McKinney, Texas. Campbell is not located in an Urbanized Area and the proposed 70 dBu signal will not reach 50% of an Urbanized Area.

46. FBM notes that Station KZDF is currently the only station licensed to McKinney. However, McKinney will not be devoid of local service because Station KNTU(FM), Denton, Texas has indicated a desire to have its license modified to McKinney to replace the local service vacated when KZDF is reallocated. Station KNTU is a noncommercial educational station which currently provides an adequate signal to McKinney and can be licensed to serve that community at its current transmitter site. As a noncommercial educational station, the licensee has filed an application on Form 340 to become licensed to McKinney. For this proceeding, Station KNTU has provided a

statement indicating its intention to become licensed to McKinney and to file an application for that purpose. See Exhibit No. 1.

47. In a similar case, the Commission staff accepted a proposal to change Station KICM, Healdton, Oklahoma to Krum, Texas in MM Docket No. 98-50, 13 FCC Rcd 7175 (1998) despite the fact that Healdton would be left without service. The reason for considering such a change was the separate proposal in MM Docket No. 98-75 to reallocate Channel 249C3 for Station KGOK from Pauls Valley, Oklahoma to Healdton. That proceeding is still pending. In addition, in MM Docket 98-155, the Commission has proposed to delete the only local service from Tishomingo, Oklahoma based on the permit issued for a new noncommercial educational station to serve Tishomingo. In view of those related proceedings, it is clear that the staff will accept a proposal to remove the only service licensed to a community if during the pendency of the proceeding another station replaces the service by providing local service to the community being vacated.

48. In this case, Station KNTU expects to have its application granted to specify McKinney prior to action on this proposal. The criteria for changing community of license in the noncommercial service are not as strict as in the commercial FM service. Furthermore, since KNTU currently provides an adequate signal for being licensed to McKinney (See Section 73.315(a) of the Commission's Rules), no changes to the facility will be necessary. The licensee will be able to implement the new service requirements immediately upon grant. Thus, the proposal to replace the McKinney service should be found acceptable for consideration.

49. Since under the proposal, McKinney will lose a local service and gain a local service, the comparison should be made between Campbell, the proposed new community of license, and Denton which will be losing a local service, rather than between Campbell and McKinney. Denton will continue to be served by three other stations KHCK(FM), KHKS(FM) and KNTD(AM). In addition KNTU will continue to provide a city grade signal to Denton. See, e.g. Ardmore,

Oklahoma and Sherman, Texas, 7 FCC Rcd 4846 (1992), where the continuation of existing reception service was a factor in allowing a change in community of license. Thus in comparing Campbell and Denton, the Commission's priorities should favor a first local service to Campbell over a fourth local service to Denton. Denton (pop. 66,270) is an Urbanized Area community. On the other hand, Campbell (pop. 683) is located in a more remote rural area. The Commission favors the relocation of stations from urban areas where numerous stations provide service, to rural areas where there are significantly fewer services. Community of License, *supra*.

50. As in the case of Terrell and Kerens, *supra*, Commission precedent supports the proposed reallocation of Channel 296A to Campbell even though it is a smaller community. See e.g., Marion and Orrville, Alabama, 6 FCC Rcd 3482 (1991), where the Commission changed a station's community of license from Marion (pop. 4,467) to Orrville (pop. 349) leaving Marion with a daytime only AM station; Henderson and Tatum, Texas et al. 12 FCC Rcd 4099 (1997) *recons. denied*, 12 FCC Rcd 12056 (1997); (larger city had approximately 9 times more population) Oshkosh, WI, et al., 10 FCC Rcd 2085 (1995) (larger city had 27 times more population); Pine Bluff and Maumelle, AR, 6 FCC Rcd 5119 (1991) (larger city had 10 times more population); and Jessup and Midway, Georgia, 6 FCC Rcd 2196 (1991) (larger city had 20.6 times more population).

51. By relocating Station KZDF to Campbell as a first local service, there would be a net gain area of 26 sq. km. and a net population loss of 196,383 persons. See Figure 44. However, as demonstrated in the attached Engineering Statement, Figures 45 and 46, the loss area has numerous services (more than 5) from the Dallas Urbanized Area in which McKinney is located. See also Temple and Taylor, Texas, 12 FCC Rcd 13755 (1997), where the loss area contained 221,473 persons. As in the case of Terrell/Kerens, the Commission should not weigh a net loss area Priority 4 (secondary service) more heavily than a proposal for first local service which serves Priority 3.

Further the entire proposal should be evaluated and will result in a net gain of approximately 3.5 million persons.

3. COMMUNITY INDICIA

Campbell, Texas

52. Campbell, Texas, is an incorporated city located in Hunt County that possesses its own distinctive personality and sense of community. The following description of Campbell's government, social activities, and businesses demonstrates that the City has the governmental, cultural and economic indicia to qualify as a community for allotment purposes.

Government

53. Campbell came into existence in 1881 when the railroad built the last section of its line from Jefferson to Greenville. See, History of Campbell, Exhibit No. 1. It was first incorporated as a city in 1973. The City of Campbell is governed by Mayor Barbara LaMore. Campbell has its own Volunteer Fire Department and water is provided to the residents by the City through Campbell Water Supply. According to the Mayor, last year the city began taxing the residents of Campbell in order to fund a new sewer plant.

54. The Campbell Independent School District provides public education from kindergarten through the twelfth grade. The City of Campbell has its own zip code, 75422, and the U.S. Postal Service operates a Post Office in Campbell to service the area.

Cultural

55. Each year the community comes together for the Annual Campbell Country Fair and Chili Cook-off. The Volunteer Fire Department is active and holds several fundraisers throughout the year. In addition, the Community Center Board holds fundraisers of its own and sponsors the annual Christmas Parade in Campbell. According to the Mayor, the whole community participates in events and there is always a great turnout.

56. In 1995, the community and the Campbell school district became unified and formalized an agreement to build a community park, to include such things as a pavilion building, baseball fields, an exercise track, picnic area, playground, and a concession stand. The community park was named "Indian Territory" as a result of voting held during the 1995 Country Fair.

57. Many churches are located in Campbell, including Campbell United Methodist Church, Fellowship Baptist Church, First Baptist Church, Prairie Valley Baptist Church, and True Vine Baptist Church. Other civic and community organizations in Campbell include the SCE Organization, Women's Club, Campbell Youth Sports Association, and the Boy Scouts.

58. The City of Campbell publishes a weekly newsletter for its residents, called the *Campbell Review Two*. In 1990, according to the U.S. Census Bureau, the City of Campbell had 683 residents.

Business

59. There are many businesses located within the City of Campbell, as illustrated in the attached business listing. See, Exhibit No. 1. Some businesses so identify with the city that they use the word "Campbell" in their names, for example Campbell Day Care, Campbell Store and Cafe, and Campbell Feed & Supply.

60. The above description clearly illustrates that the residents of Campbell have an active city government, a strong sense of community, and a vibrant business sector. These factors demonstrate that the City of Campbell has the social, economic and governmental components commonly associated with community status.

61. FBM has entered into an agreement with the licensee which provides for reimbursement for these changes and hereby states that it will reimburse the licensee for its expenses. The licensee has provided its consent to the changes and has agreed to apply for the changes if approved. See Exhibit No. 1.

N. Station KVRW, Lawton, Oklahoma

62. Station KVRW, Lawton, Oklahoma, proposes to modify its transmitter site reference point on Channel 297C2. This transmitter site relocation of 4.56 kilometers permits the upgrade of Station KYNZ to Channel 256C3 at Lone Grove, and no other changes to Station KVRW are necessary. See Engineering Statement, Figure 39. The licensee of KVRW has provided a statement consenting to the site change and states that it will apply for the new reference point, if necessary, to comply with the Commission's spacing rules. See Exhibit 1. As indicated, a channel study at the new reference coordinates is provided in the Engineering Statement, Figure 39 and a net increase in gain area and population is demonstrated in Figure 41.

IV. THE CUT AND SHOOT CASE

63. FBM and the co-petitioners recognize that their proposal is complicated in that it involves a large number of communities. However, all proposed channels meet the Commission's technical rules and policies. Furthermore, the facts are straightforward and should not present any issues that are difficult issues to decide. FBM and the co-petitioners are cognizant of the Commission's policy set forth in Cut and Shoot, Texas, *supra*, and have made every attempt to comply with that policy.

64. In Cut and Shoot, the Chief, Policy and Rules Division took the occasion to clarify Section 73.208(a)(1)(i) of the Commission's Rules by stating that rule making proposals must protect all other station authorizations. As such, proposals (and counterproposals) are required to be capable of being effectuated at the time they are ripe for action and cannot be contingent upon future action by third parties. Cloverdale, Alabama, et al. (MO&O) 12 FCC Rcd 2090, 2093 (1997). However, there is no prohibition in Cut and Shoot on the Commission's acceptance of a rule making proposal where such proposal is not contingent on the outcome of a separate pending proceeding. For this reason, Cut and Shoot does not apply here because there are no other pending proceedings

which must be decided first in order to process this instant proposal. Moreover, the Commission should not extend the reach of Cut and Shoot given its stated policy to favor mutual facilities modifications such as those proposed here. In this regard, the Commission has stated:

We believe that agreements between commercial FM broadcasters to undertake mutual facility modifications, so long as they are consistent with technical spacing and protection requirements, can serve the public interest. Indeed, our one-step upgrade and downgrade application procedures permit expedited staff review of the most complex proposals involving both allotment and application issues. Moreover, we wish to make clear that we would be favorably disposed to grant waivers of the contingent application rule, 47 C.F.R. § 73.3517, to facilitate mutual facility modifications otherwise in the public interest (citations omitted).

Thunderbolt Broadcasting Company (MO&O) 13 FCC Rcd 1959, 6963 (1998).

65. In particular, the reach of Cut and Shoot should not apply to the Commission's pending proceeding in Detroit, Texas et al., MM Docket No. 97-26, discussed in ¶¶ 11-13 above. That proceeding which has two Applications for Review pending, resulted in the allotment of Channel 294C2 at Detroit, Texas and denied the allotment of Channel 294C2 to Hugo, Oklahoma. The instant proposal to allot channel 294C to Muenster, Texas would conflict with the allotment of Channel 294C2 to either Detroit or Hugo, but in either case an alternative channel is available here for allotment. Channel 282C2 or Channel 238C2 may be substituted at Detroit regardless of whether the R&O is affirmed on review. Similarly Channel 282C2 may be substituted at Hugo (with an additional substitution of Channel 262A for the vacant Channel 284A allotment at Antlers, Oklahoma). Therefore, the Commission can simply substitute Channel 282C2 for consideration at Detroit or at Hugo and allow the instant proposal to be effectuated when granted since the proposal here is not contingent upon any particular outcome in the Detroit proceeding nor dependent upon the actions of any third parties therein. Rather, whatever the outcome of the Detroit/Hugo proceeding, a channel substitution is available to remove any conflict between that proceeding and this one.

66. Similarly, as discussed earlier, the Commission need not await the outcome of the Madill/Durant proceeding because the Madill proposal was withdrawn and a Durant channel substitution is proposed here. As for Clinton, Oklahoma, the licensee has agreed to change its transmitter site allowing the instant proposal to be effectuated here without regard to whether the Clinton application or the change of city of license is granted or not.

V. CONCLUSION

67. This Counterproposal is the result of an extensive and coordinated effort on the part of many broadcasters in Texas and Oklahoma to improve their stations without adversely affecting any existing stations. This proposal will provide three new first local services, overall gains in population to approximately 3.5 million people, and the elimination of existing short spacings to a large number of the stations. The parties have attempted to comply with all Commission technical rules and policies particularly with respect to changes in community of license and the Cut and Shoot policy. Despite the number of stations involved, FBM and the co-petitioners are confident that the implementation of this proposal can proceed smoothly due to the agreements that have been reached and the cooperation of all parties. The overwhelming public interest benefits offered by this proposal warrant serious consideration by the Commission.

Respectfully submitted,

FIRST BROADCASTING MANAGEMENT, L.L.C.

By: Mark N. Lipp
Mark N. Lipp
J. Thomas Nolan
Shook, Hardy & Bacon, LLP
1850 K Street, NW
Suite 900
Washington, DC 20006
(202) 452-1450

Its Counsel

GAIN-AIR, INC.

By: Matthew H. McCormick (by MNL)
Matthew H. McCormick
Reddy Begley & McCormick
1001 22nd Street, NW
Suite 350
Washington, DC 20037
(202) 659-5700

Its Counsel

KCYT-FM LICENSE CORP.

By: Roy R. Russo (by MNL)
Roy R. Russo, Esq.
Lawrence N. Cohn, Esq.
Cohn and Marks
1920 N Street, NW
Suite 300
Washington, DC 20036-1622
(202) 452-4830

Its Counsel